

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JOSE MORALES, et al.,	)	8:08CV88
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER
	)	
GREATER OMAHA PACKING	)	
COMPANY, INC.,	)	
	)	
Defendant.	)	

This matter is before the court on defendant's motion to dismiss plaintiffs and opt-in class members who have failed to participate in discovery and motion to decertify the collective action, Filing No. [108](#). Defendant contends that plaintiffs have failed to provide certain class members for deposition testimony and failed to provide certain discovery information as to some of the plaintiffs. Plaintiffs contend that defendant has failed to provide them with appropriate names and addresses of these plaintiff employees (other class members) and have hindered plaintiffs' ability to get current employees to attend depositions, apparently because defendant is requiring those persons to tell their supervisors that they are attending the depositions. Defendant requests that this court dismiss those plaintiffs who have not yet given their depositions and to decertify the class, as defendant has only taken the depositions of three plaintiffs to date.

The court notes that on July 6, 2009, it entered an order denying defendant's first motion to dismiss which dealt with substantially similar issues. Filing No. [107](#). In that order the court stated "A final decision on collective action status will be made after discovery is largely complete." *Id.* at 3. Three weeks later the defendant filed this second motion to dismiss. Discovery has not been completed, and in fact because of this motion, discovery

has been stayed. The court is going to order magistrate judge to progress this case and order the plaintiffs and the defendant to continue discovery in this matter. Any matters of bad faith discovery are to be brought to the attention of the magistrate judge who will determine what action needs to be taken. The motion to dismiss and to decertify are denied as untimely. The defendant shall not file a further motion to dismiss as to this issue until such time as discovery deadlines have expired.

THEREFORE, IT IS ORDERED that defendant's motion to dismiss, Filing No. [108](#), is denied. The magistrate judge is ordered to progress the case and to address any discovery disputes that are currently impeding the progression of this case.

DATED this 26<sup>th</sup> day of January, 2010.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief District Judge